

SUPREME COURT OF ARKANSAS

No.

Opinion Delivered 2-22-07

IN RE: SUPREME COURT
COMMITTEE ON CRIMINAL
PRACTICE; RULES OF
CRIMINAL PROCEDURE 33.8
AND 36(C); AND RULE OF
APPELLATE PROCEDURE --
CRIMINAL 16

PER CURIAM

The Supreme Court Committee on Criminal Practice has proposed several rules changes. We express our gratitude to the members of the Criminal Practice Committee for their work and take the following actions with regard to their recommendations:

1. Adoption of Arkansas Rule of Criminal Procedure 33.8.

The Committee recommends that jurors should not be permitted to question witnesses and proposes a new Rule 33.8. We agree with the Committee's recommendation and adopt the rule as published below to be effective immediately.

(New) Rule 33.8. Questions by Jurors.

Jurors shall not be permitted to pose questions to witnesses, either directly or through written questions submitted to the judge or to the parties.

Reporter's Note, 2007 Addition of Rule 33.8.

Permitting jurors to question witnesses may cause delay, prejudice, or error.

Rule 33.8 was added in 2007 to bar the practice.

2. Amendment to Arkansas Rule of Criminal Procedure 36 (c).

The Committee recommends that the minimum record requirement in an appeal from

district court to circuit court should be a certified copy of the district court docket sheet. To accomplish this, an amendment to Arkansas Rule of Criminal Procedure 36(c) is proposed.¹

We agree with the Committee's recommendation and adopt the amendment as published below to be effective immediately.

Rule 36. Appeals from District Court to Circuit Court.

(c) *How Taken.* An appeal from a district court to circuit court shall be taken by filing with the clerk of the circuit court a certified record of the proceedings in the district court. Neither a notice of appeal nor an order granting an appeal shall be required. The record of proceedings in the district court shall include, at a minimum, a copy of the district court docket sheet and any bond or other security filed by the defendant to guarantee the defendant's appearance before the circuit court. It shall be the duty of the clerk of the district court to prepare and certify such record when the defendant files a written request to that effect with the clerk of the district court and pays any fees of the district court authorized by law therefor. The defendant shall serve a copy of the written

¹(c) *How Taken.* An appeal from a district court to circuit court shall be taken by filing with the clerk of the circuit court a certified record of the proceedings in the district court. Neither a notice of appeal nor an order granting an appeal shall be required. The record of proceedings in the district court shall include, at a minimum, a copy of the district court docket sheet and any bond or other security filed by the defendant to guarantee the defendant's appearance before the circuit court. It shall be the duty of the clerk of the district court to prepare and certify such record when the defendant files a written request to that effect with the clerk of the district court and pays any fees of the district court authorized by law therefor. The defendant shall serve a copy of the written request on the prosecuting attorney for the judicial district and shall file a certificate of such service with the district court. The defendant shall have the responsibility of filing the certified record in the office of the circuit clerk. ~~The record shall include any bond or other security filed by the defendant to guarantee the defendant's appearance before the circuit court.~~ Except as otherwise provided in subsection (d) of this rule, the circuit court shall acquire jurisdiction of the appeal upon the filing of the certified record in the office of the circuit clerk.

request on the prosecuting attorney for the judicial district and shall file a certificate of such service with the district court. The defendant shall have the responsibility of filing the certified record in the office of the circuit clerk. Except as otherwise provided in subsection (d) of this rule, the circuit court shall acquire jurisdiction of the appeal upon the filing of the certified record in the office of the circuit clerk.

Reporter's Notes, 2007 Amendments.

The 2007 amendments clarified the contents of the record that must be filed with the circuit court in order to vest that court with jurisdiction of the appeal. *Compare McNabb v. State*, 367 Ark. 93, — S.W.3d — (2006) rehearing denied — Ark —, — S.W.3d—. After acquiring jurisdiction of the appeal, the circuit court can, if necessary or desirable, order additional documents or pleadings filed in the district court to be made a part of the record on appeal.

3. Amendment to Arkansas Rule of Appellate Procedure - Criminal 16.

The Committee recommends a change to Rule of Appellate Procedure - Criminal 16 to permit the state to recoup the cost of indigent transcripts when a defendant moves to substitute retained counsel for appointed counsel. We agree with the Committee's recommendation and adopt the amendment as published below to be effective immediately.

Arkansas Rule of Appellate Procedure - Criminal.

Rule 16. Trial counsel's duties with regard to appeal.

* * *

(d) If pursuant to Ark. Code Ann. § 16-13-506(b), the state has paid the court reporter for the transcript that is filed as part of the record with the appellate court

and the defendant thereafter moves to substitute retained counsel for appointed counsel, the court may, as a condition of granting the motion, require the defendant to reimburse the state for the cost of the transcript.